

Securities and Exchange Commission

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have been overruled by the Commission pursuant to section 24(b). The making of such information available pursuant to this section shall not be deemed a representation by any exchange as to the accuracy, completeness, or genuineness thereof.

(b) In the case of an application for registration of a security pursuant to section 12 an exchange may delay making available the information contained therein until it has certified to the Commission its approval of such security for listing and registration.

(Sec. 24, 48 Stat. 901, as amended; 15 U.S.C. 78x)

[16 FR 3109, Apr. 10, 1951]

§ 240.24c-1 Access to nonpublic information.

(a) For purposes of this section, the term "nonpublic information" means records, as defined in Section 24(a) of the Act, and other information in the Commission's possession, which are not available for public inspection and copying.

(b) The Commission may, in its discretion and upon a showing that such information is needed, provide nonpublic information in its possession to any of the following persons if the person receiving such nonpublic information provides such assurances of confidentiality as the Commission deems appropriate:

(1) A federal, state, local or foreign government or any political subdivision, authority, agency or instrumentality of such government;

(2) A self-regulatory organization as defined in Section 3(a)(26) of the Act, or any similar organization empowered with self-regulatory responsibilities under the federal securities laws (as defined in Section 3(a)(47) of the Act), the Commodity Exchange Act (7 U.S.C. 1, *et seq.*), or any substantially equivalent foreign statute or regulation;

(3) A foreign financial regulatory authority as defined in Section 3(a)(51) of the Act;

(4) The Securities Investor Protection Corporation or any trustee or counsel for a trustee appointed pursuant to Section 5(b) of the Securities Investor Protection Act of 1970;

(5) A trustee in bankruptcy;

(6) A trustee, receiver, master, special counsel or other person that is appointed by a court of competent jurisdiction or as a result of an agreement between the parties in connection with litigation or an administrative proceeding involving allegations of violations of the securities laws (as defined in Section 3(a)(47) of the Act) or the Commission's Rules of Practice, 17 CFR Part 201, or otherwise, where such trustee, receiver, master, special counsel or other person is specifically designated to perform particular functions with respect to, or as a result of, the litigation or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice;

(7) A bar association, state accountancy board or other federal, state, local or foreign licensing or oversight authority, or a professional association or self-regulatory authority to the extent that it performs similar functions; or

(8) A duly authorized agent, employee or representative of any of the above persons.

(c) Nothing contained in this section shall affect:

(1) The Commission's authority or discretion to provide or refuse to provide access to, or copies of, nonpublic information in its possession in accordance with such other authority or discretion as the Commission possesses by statute, rule or regulation; or

(2) The Commission's responsibilities under the Privacy Act of 1974 (5 U.S.C. 552a), or the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401-22) as limited by section 21(h) of the Act.

[58 FR 52419, Oct. 8, 1993]

§ 240.31-1 Securities transactions exempt from transaction fees.

Preliminary Note

The section 31 fee for options transactions occurring on a national securities exchange, or transactions in options subject to prompt last sale reporting occurring otherwise than on an exchange, is to be paid by the exchange or the national securities association itself, respectively, or the Options Clearing Corporation on behalf of the

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exchange or association, and such fee is to be computed on the basis of the option premium (market price) for the sale of the option. In the event of the exercise of an option, whether such option is traded on an exchange or otherwise, a section 31 fee is to be paid by the exchange or the national securities association itself, or the Options Clearing Corporation on behalf of the exchange or association, and such fee is to be computed on the basis of the exercise price of the option.

(a) The following shall be exempt from section 31 of the Act:

(1) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by section 3(a) or 3(b) thereof (15 U.S.C. 77c(a) or 77c(b)), or a rule thereunder.

(2) Transactions by an issuer not involving any public offering within the meaning of section 4(2) of the Securities Act of 1933 (15 U.S.C. 77d(2));

(3) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

(4) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; and

(5) Transactions which are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in §240.11Aa3-1 (Rule 11Aa3-1 under the Act) and any approved plan filed thereunder;

(b) Over-the-counter ("OTC") transactions in OTC securities which are subject to unlisted trading privileges on a national securities exchange shall be exempt only from section 31(c) of the Act. 7.

[Revised and amended at 61 FR 68594, Dec. 30, 1996]

§ 240.36a1-1 Exemption from Section 7 for OTC derivatives dealers.

PRELIMINARY NOTE: OTC derivatives dealers are a special class of broker-dealers that are exempt from certain broker-dealer requirements, including membership in a self-

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regulatory organization (§240.15b9-2), regular broker-dealer margin rules (§240.36a1-1), and application of the Securities Investor Protection Act of 1970 (§240.36a1-2). OTC derivative dealers are subject to special requirements, including limitations on the scope of their securities activities (§240.15a-1), specified internal risk management control systems (§240.15c3-4), recordkeeping obligations (§240.17a-3(a)(10)), and reporting responsibilities (§240.17a-12). They are also subject to alternative net capital treatment (§240.15c3-1(a)(5)).

(a) Except as otherwise provided in paragraph (b) of this section, transactions involving the extension of credit by an OTC derivatives dealer shall be exempt from the provisions of section 7(c) of the Act (15 U.S.C. 78g(c)), provided that the OTC derivatives dealer complies with Section 7(d) of the Act (15 U.S.C. 78g(d)).

(b) The exemption provided under paragraph (a) of this section shall not apply to extensions of credit made directly by a registered broker or dealer (other than an OTC derivatives dealer) in connection with transactions in eligible OTC derivative instruments for which an OTC derivatives dealer acts as counterparty.

[63 FR 59404, Nov. 3, 1998]

§ 240.36a1-2 Exemption from SIPA for OTC derivatives dealers.

PRELIMINARY NOTE: OTC derivatives dealers are a special class of broker-dealers that are exempt from certain broker-dealer requirements, including membership in a self-regulatory organization (§240.15b9-2), regular broker-dealer margin rules (§240.36a1-1), and application of the Securities Investor Protection Act of 1970 (§240.36a1-2). OTC derivative dealers are subject to special requirements, including limitations on the scope of their securities activities (§240.15a-1), specified internal risk management control systems (§240.15c3-4), recordkeeping obligations (§240.17a-3(a)(10)), and reporting responsibilities (§240.17a-12). They are also subject to alternative net capital treatment (§240.15c3-1(a)(5)).

OTC derivatives dealers, as defined in §240.3b-12, shall be exempt from the provisions of the Securities Investor